

REMARKS

I. Status of Claims

Claims 1-83 are currently pending. Claims 45 and 46 have been amended to correct obvious typographical errors. No new matter has been added.

II. Rejections under 35 U.S.C. § 103(a)

A. Cottard in view of Grollier

Claims 1-45, 47, 55, 56, and 59-83 have been rejected under 35 U.S.C. § 103(a) as allegedly obvious over U.S. Published Patent Application No. 2001/0023514 to Cottard et al. ("Cottard") in view of U.S. Patent No. 4,357,141 to Grollier et al. ("Grollier").

According to the Office, Cottard "teaches a composition for oxidation dyeing of hair comprising oxidation bases . . . , at least one non-oxyalkylenated fatty alcohol . . . , [and] at least one associative polymer" Office Action at pages 2-3. While the Office recognizes that Cottard fails to teach a composition comprising at least one amide of an alkanolamine and a C₁₄-C₃₀ fatty acid, the Office nonetheless attempts to rectify this deficiency with Grollier, stating that Grollier "teaches a composition comprising fatty amides such as oleic diethanolamide and stearic monoethanolamide" *Id.* at 4. Thus, the Office concludes that one skilled in the art would have been motivated to combine the references as Cottard "suggests the use of the genus fatty amide in the composition," and "the ordinary artisan would have the reasonable expectation that any of the species of the genus would have similar properties" *Id.*

Applicants respectfully traverse for at least the reason that the Office as failed to establish a *prima facie* case of obviousness.

In making a rejection under 35 U.S.C. § 103, the Office has the initial burden to establish a *prima facie* case of obviousness. M.P.E.P. § 2143. To meet this burden, the Office must establish not only that the cited references teach or suggest all of the claim limitations, but also must point to some objective teaching in the references, coupled with the knowledge generally available to one of ordinary skill in the art at the time of the invention, that would have motivated one of ordinary skill to combine reference teachings with a reasonable expectation of success in obtaining the presently claimed invention. See M.P.E.P. §§ 2143.01 and 2143.02; *In re Fine*, 5 U.S.P.Q.2d 1596, 1598, 837 F.2d 1071, 1074 (Fed. Cir. 1988). Moreover, the Office must consider each reference for what that reference teaches as a whole, including portions that would teach away from the claimed invention. M.P.E.P. § 2141.03(IV).

The Office's alleged teaching of the "genus" of fatty amides in Cottard appears as part of a listing of components included in the oxidizing composition of the Example. The Example simply recites that 0.9g of "fatty amide" was included in the composition. The only other reference to "fatty amide" appears on page 16, paragraph [0324], where Cottard lists examples of specific nonionic surfactants that may be incorporated into the compositions disclosed therein, including polyethoxylated fatty amides and polyglycerolated fatty amides. Thus, one skilled in the art looking to the disclosure of Cottard for guidance as to what "fatty amide" is useful in compositions according to the invention, would see the recitation of only two specific amides, polyethoxylated fatty amides and polyglycerolated fatty amides. Accordingly, the skilled artisan considering

the teachings of Cottard as a whole would not necessarily assume that the teaching of “fatty amide” in the Example is a teaching that the entire genus of fatty amides would be useful in the composition therein, but rather would logically assume that the “fatty amide” added to the oxidizing composition of the example is a polyethoxylated fatty amide or polyglycerolated fatty amide, as taught in paragraph [0324].

Yet Grollier nowhere teaches or suggests polyethoxylated fatty amides or polyglycerolated fatty amides, but rather only exemplifies “lauric or oleic diethanolamide, mono- or diethanolamide of copra, [and] stearic monoethanolamide.” Grollier, col. 7, ll. 24-26. Adding the fatty amides of Grollier into the composition of Cottard, as the Office suggests, runs counter to the teachings of Cottard that the fatty amide is polyethoxylated or polyglycerolated. Thus, in light of the specific teaching in Cottard of polyethoxylated fatty amides and polyglycerolated fatty amides, the Office has failed to establish any motivation to incorporate the fatty amides disclosed in Grollier, which are not polyethoxylated or polyglycerolated, into the composition of Cottard.

Moreover, neither the fatty amides disclosed in Grollier nor the fatty amides disclosed in Cottard would necessarily lead one skilled in the art to the amides recited in the present claims, i.e., “at least one amide of an alkanolamide and a C₁₄-C₂₂ fatty acid.” Specifically, the polyethoxylated and polyglycerolated fatty amides of Cottard are not amides of an alkanolamide and a C₁₄-C₂₂ fatty acid. While Grollier does admittedly teach oleic diethanolamide, it additionally teaches other amides, such as lauric diethanolamide, that are not encompassed by the genus of at least one amide of an alkanolamide and a C₁₄-C₂₂ fatty acid, as recited in the present claims. The Office has failed to establish any reason why one skilled in the art would be motivated to select

Grollier's amide, which happens to be an amide of an alkanolamide and a C₁₄-C₂₂ fatty acid, particularly since this is a purely optional component listed with a long list of other optional components (see col. 6, l. 67 to col. 8, l. 2), for addition to the composition of Cottard. Such a specific combination requires pointed guidance and motivation that is simply not provided by either of the references. Accordingly, for at least the reasons discussed above, Applicants respectfully request reconsideration of the rejection.

B. Cottard in view of Grollier and Laurent

Claims 46, 48-54, 57, and 58 have been rejected under 35 U.S.C. § 103(a) as allegedly obvious over Cottard in view of Grollier and further in view of U.S. Published Patent Application No. 2002/0046431 to Laurent et al. ("Laurent").

The Office readily admits that neither Cottard nor Grollier teaches the "claimed cationic amphiphilic polyurethane polymers," but relies on Laurent as teaching "a composition comprising [the] cationic polyurethane of formula (Ia) . . . ," as well as other elements of the claims. Office Action at 5-6. The Office then concludes that one skilled in the art would be motivated to combine the reference teachings because Cottard "clearly suggests the use of cationic polymers in a hair dyeing composition," and Laurent "clearly teaches the claimed cationic polyurethane polymers." *Id.* at 6. Applicants respectfully traverse.

Applicants first note that claims 48-54 are not directed towards a cationic polyurethane, as the Office alleges, and therefore the rejection as to those claims should be withdrawn for that reason alone.

Moreover, Laurent does not rectify the deficiencies discussed above with respect to the Office's proposed combination of Cottard and Grollier. Even assuming,

arguendo, that Laurent does teach a composition comprising a cationic polyurethane polymer, as the Office asserts, one skilled in the art would still not have arrived at a composition according to the invention, as discussed above.

Accordingly, no *prima facie* case of obviousness has been established, and Applicants respectfully request reconsideration of the rejection.

III. Conclusion


In view of the foregoing amendments and remarks, Applicants respectfully request reconsideration of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

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